Riparian Rule Talking Points, Background, and Questions *- Draft May 17, 2014*

This is a working draft of overall topic areas and background needed to develop EPA talking points for the June 18-19 Environmental Quality Commission (EQC) meeting in Salem, OR and for the June 23 Board of Forestry (BOF). I have nested questions from DEQ and BOF and some preliminary responses in these topic areas.

I would suggest we come up with our talking points, then check if they are responsive to the questions. Then we can strategize what we want to present and what we want to have answers to in case we are asked.

Main Points

- *Speak to importance of protecting cold water for fish. Environmental Benefits to Riparian Rule and Need for Rule.*
- *EPA's Support of Riparian Rule for small and medium fish-bearing streams*

Topics:

1. *Importance of Protecting Cold Water: Temperature Guidance (John, Dru, NOAA, others)*
2. *Environmental Benefits to Riparian Rule (All)*
3. *Riparian Rule and CWA (Rochelle, Jenny, Alan, Others)*
4. *Riparian Rule and CZARA (Alan, Jenny, Others)*
5. *Where Riparian Rules Apply (Rochelle, Jenny, Alan, Others)*
6. *RipStream and Paired Watershed Study (Peter, All)*
7. *Additional Rulemaking for Type N Streams (*

Importance of Protecting Cold Water: Temperature Guidance

What ODEQ wants EPA to Address: Construct behind PCW, Intent of the 0.3°C human use allowance, How anti-deg provision is intended to protect the natural thermal regime which protects the natural resources, the scientific underpinning for taking a NTP approach and how PCW fits into this construct

Ideas from EPA of Addl Things to Address: Design of temperature guidance, scientific support from temperature guidance and other new information. NOAA crossover on this topic.

Talking Points

Other Background for Responses

BOF: What is the biological basis of the PCW standard (BOF question)?

Answer: EPA can provide an overview of the scientific basis of the PCW and the rest of the temperature water quality standard. The goals of the Clean Water Act are to protect and restore our nation's waters. Briefly, OR's temperature standard was derived from EPA's Pacific Northwest Temperature Guidance (2003). This Guidance, in turn, was based upon 100's of studies on salmonid life stages' biological thresholds for temperature—where injury and mortality are prevented in the target organism. Biologically-based pollutant criteria, including the temperature criteria, are chosen to be protective of the defined uses for the streams; in this case, to support a aquatic life- fish. It does not make sense to choose criteria that do not protect the use or result in unacceptable mortality or injury to the use such

that the goal cannot be achieved. The temperature criteria identified in the guidance and adopted by Oregon work together to encompass the thermal complexity of streams. While the numeric criteria are from the upper ends of the ranges found to be protective of the aquatic life uses, the protecting cold water narrative, and other narratives, enable such criteria to be fully protective, since fish are reliant on cold water areas ('refuges') for maintaining a healthy life cycle, and together, the criteria protect the bulk stream temperatures from being too warm in the short and long term, so that fish can survive, but the colder waters enable the population as a whole to not only survive but to be self-propagating. We can also point out the fact that where the PCW criterion applies, that water is critical for maintaining ambient temperatures further downstream; the downstream waters will be further impaired or degraded if that upstream water is not maintained at close to its existing temperature. Further, there is much scientific evidence that protecting from the start results in much fewer overall costs than trying to restore those waters once degraded. An analogy is to preventive dentistry – it is much more costly and unhealthy to simply wait until teeth rot and try to fix them at that point than conducting regular maintenance and preventive measures such as cleanings, and avoiding sugary foods, that will maintain them in a healthy state. It is similar with protecting colder waters. We commend OR for using published and peer reviewed scientific data in guiding the application of its nonpoint source rules and BMPS. We feel OR's application of the riparian rules is to the highest priority areas; however, we encourage OR to consider applying the rules more broadly to ensure restoration and protection of aquatic life.

Environmental Benefits to Riparian Rule
EPA: Temperature impairments, salmon studies, Oregon Plan, RipStream, CZARA

Talking Points

Other Background for Responses
ODEQ: Clarification on how WA rule allowing for 2.8 degrees increase really applies to forestry

Riparian Rule and CWA

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Answer: Water quality standards apply to the waterbody, not the regulated source. In terms of ensuring compliance with WQS, OR has the authority to regulate NPS in their state statutes, and ODEQ, in particular, has the authority to enforce the laws on OR's books. [something need to add that OR use sound science in making decisions about achieving WQS?]. Have to protect existing uses (add?).

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BOF: Does this riparian rule process relate to the NOAA/EPA proposal to disapprove the State of Oregon's coastal nonpoint pollution control program, if so, how?

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Oregon's Designated Uses and implementation of protecting cold water designated uses vs. the riparian rule mapping:

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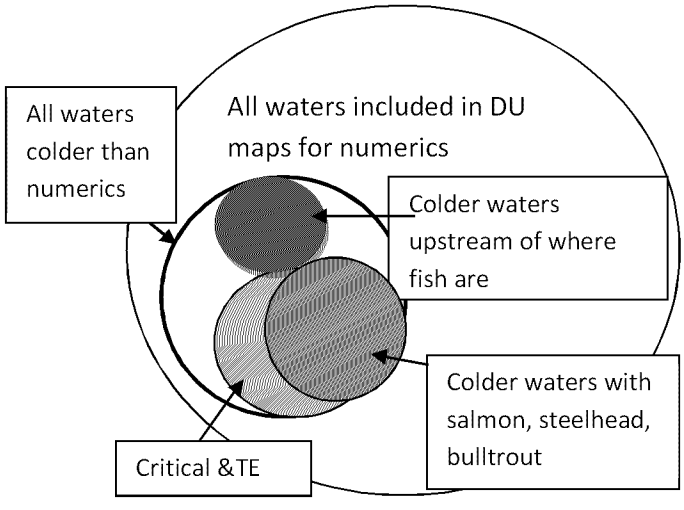
Protecting cold water conversation w/ODEQ)



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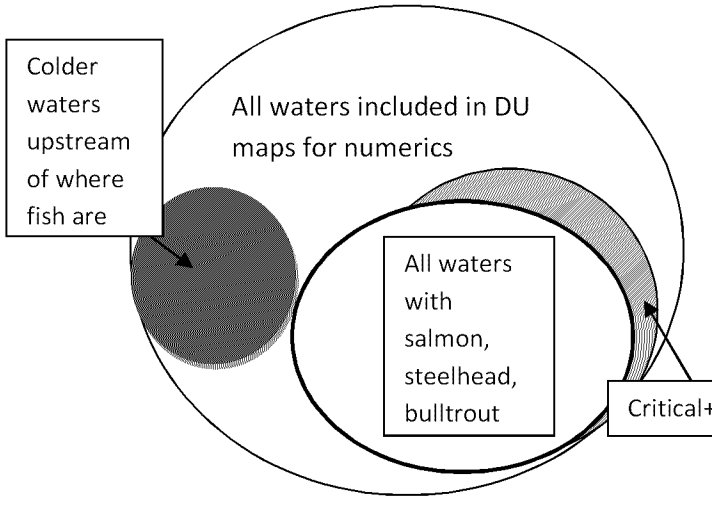

BOF: How do ODF and DEQ identify the geographic extent of the Protecting Coldwater Criterion, including where throughout the state (including eastern Oregon) the PCW standard is in force? How far upstream of reaches covered by the PCW standard should any riparian rule be applied to ensure we're not sabotaging our ability to meet the standard? Is the concept of drafting the rule keyed on where the

PCW standard has been established a legally defensible approach to meeting our Clean Water Act obligations?

Answer: Per Oregon's approved rule language that is in effect for CWA purposes, the PCW applies where T&E species are present; areas upstream of where T&E species are present, and where critical habitat is present. There is no map currently adopted into standards – it is a narrative use. The other temperature criteria apply to the designated use maps adopted into Oregon regulations. There are year-round fish uses as well as spawning use maps for criteria that apply for specific times of year. There are typically two maps per basin unless no salmonid uses occur in a particular basin. Other aquatic life, beyond salmonids, are sensitive to temperature, however, OR identified salmonids as the most sensitive to temperature, and so salmonids (salmon, steelhead, trout, and bull trout) comprise the use that is designated in the maps for OR waters. The other aspects of water quality standards that are relevant include OR's antidegradation policy in effect for Clean Water Act purposes. Before any degradation of a waterbody with water quality that is better than the criteria is allowed, federal regulations state that, "the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control." Further, under the federal regulations, any degradation that is allowed must still provide water quality sufficient to protect existing uses fully.

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Comment [R1]: Bring copies

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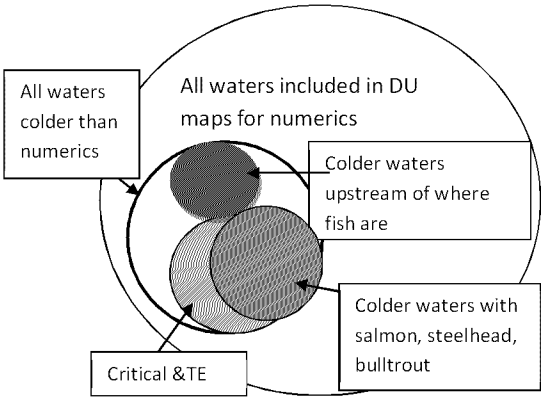

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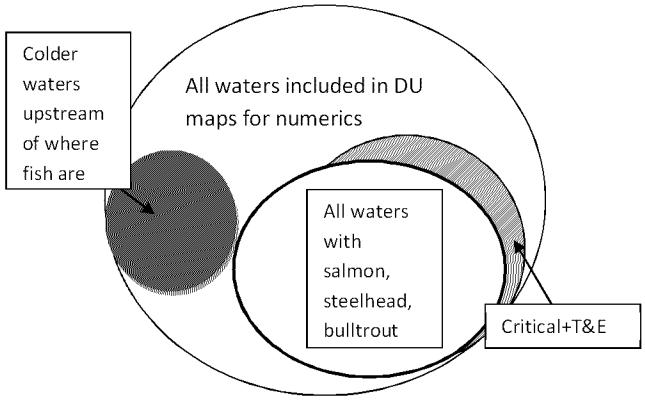

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Comment [R2]: I am not speaking to where colder than since it is implicit in the name of the narrative

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